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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,589	10/06/2003	Jonathan S. Spigiel	201818-0315425	5250

909 7590 07/06/2009

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EXAMINER

FIELDS, BENJAMIN S

ART UNIT

PAPER NUMBER

3692

MAIL DATE

DELIVERY MODE

07/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/680,589

**Applicant(s)**

SPIRGEL ET AL.

**Examiner**

BENJAMIN S. FIELDS

**Art Unit**

3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Introduction*

1. The following is a **FINAL** Office Action in response to the communication received on 30 March 2009. Claims 1-72 are now pending in this application.

### *Response to Amendments*

2. The Examiner acknowledges the Applicants comments and remarks regarding the originally asserted 35 U.S.C. 101 Rejection of Claims 1 and 70, however, the Examiner maintains these rejections. The Examiner notes that the method of the instant application consists of steps/functions which can be accomplished via human interaction.

3. Applicants Amendments to Claims 1-72 has been acknowledged in that: **NO Claims have been cancelled; Claims 1-15, 17-36, 38-47, 50-55, 57, 59-64, and 66-72 have been newly amended; NO Claims have been newly added;** hence, as such, **Claims 1-72 are pending within this application.**

### *Claim Rejections - 35 USC § 101*

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims **1** and **70** are rejected under 35 U.S.C. 101 because the claimed invention is not directed to a secondary statutory subject matter/class.

Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to a machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In *re* Bilski et al, 88 USPQ 2d 1385 CAFC (2008); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine. In this particular case, Claims **1** and **70** are not tied to another statutory class, such as any hardware. Thus, it is unclear as to whether or not the claims are mere processes that involve purely human labor.

The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101. Note the Board of Patent Appeals Informative Opinion *Ex parte Langemyer et al.*:  
[http://iplaw.bna.com/iplw/5000/split\\_display.adp?fedfid=10988734&vname=ippqcases2](http://iplaw.bna.com/iplw/5000/split_display.adp?fedfid=10988734&vname=ippqcases2)

[&wsn=500826000&searchid=6198805&doctypeid=1&type=court&mode=doc&split=0&scm=5000&pg=0.](#)

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-6, 9-27, 29-36, 38-48, 50-57, 59-61, and 63-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Annunziata (US PG Pub. No. 2001/0034688), [hereinafter Annunziata].

Referring to Claim 1: Annunziata shows a method for creating shares in a commodity, said commodity shares being processed using an Electronic Communication Network (ECN), the method comprising: receiving, over the ECN, a [creation order] comprising a request to create the commodity shares (Annunziata: Abstract; Figures 1-2; Page 1, Paragraphs 0007-0014; Page 2, Paragraphs 0026-0028; Page 5, Paragraph 0043) confirming, over the ECN, delivery into an account of an amount of commodity associated with the commodity shares being requested (Annunziata: Abstract; Figures 1-3; Page 1, Paragraph 0014); and releasing, over the ECN, the requested commodity shares based upon the amount of commodity delivered into the account (Annunziata: Abstract; Figures 1-3; Page 1, Paragraph 0014).

The Examiner notes that the Annunziata reference does not expressly utilize the term "creation order". It should be noted, however, that although the Annunziata reference does not expressly show the term "creation order", the obvious teaching of such is evident in that Annunziata discusses a system and method which is responsible for the creation of commodities, etc. (See at least Annunziata: Page 1, Paragraphs 0007-0014; Page 5, Paragraph 0043).

Referring to Claim 2: Annunziata discusses a method further comprising acknowledging receipt of the creation order over the ECN, (Annunziata: Page 2, Paragraph 0026-Page 3, Paragraph 0029).

Referring to Claim 3: Annunziata teaches a method further comprising sending a notice of pending commodity delivery to a custodian of the account via the ECN (Annunziata: Page 2, Paragraph 0026-Page 3, Paragraph 0029).

Referring to Claim 4: Annunziata discloses a method further comprising confirming receipt of the notice of pending commodity delivery via the ECN (Annunziata: Page 2, Paragraph 0026-Page 3, Paragraph 0029).

Referring to Claim 5: Annunziata shows a method, wherein the value of the commodity shares released over the ECN is approximately equal to the value of the commodity delivered into the account (Annunziata: Page 3, Paragraphs 0029-0031).

Referring to Claim 6: Annunziata teaches a method further comprising receiving a reconciliation from the custodian via the ECN (Annunziata: Page 3, Paragraphs 0029-0033).

Referring to Claim 9: Annunziata discusses a method, wherein the creation order received over the ECN comprises a request to create either a minimum amount of shares or a multiple of the minimum amount (Annunziata: Page 3, Paragraph 0033-Page 4, Paragraph 0038).

Referring to Claim 10: Annunziata shows a method, wherein the value of the amount of commodity shares delivered into the account via the ECN is not less than a minimum value (Annunziata: Page 3, Paragraph 0033-Page 4, Paragraph 0038).

Referring to Claims 11-18: Claims 11-18 parallel the limitations of Claims 1-6, and 9-10. As such, Claims 11-18 are rejected under the same basis as are Claims 1-6, and 9-10 as mentioned supra.

Referring to Claims 19-27 and 29: Claims 19-27 and 29 reflect the limitations of Claims 1-6, and 9-18. As such, Claims 19-27 and 29 are rejected under the same basis as are Claims 1-6, and 9-18 as mentioned supra.

Referring to Claims 30-36 and 38-40: Claims 30-36 and 38-40 parallel the limitations of Claims 1-6, and 9-18 in that they refer to the redemption of the shares created in the commodity. As such, Claims 30-36 and 38-40 are rejected under the same basis as are Claims 1-6, and 9-18 as mentioned supra.

Referring to Claims 41-48 and 50-52: Claims 41-48 and 50-52 reflect the limitations of Claims 30-36 and 38-40 in that they refer to the redemption of the shares created in the commodity. As such, 41-48 and 50-52 are rejected under the same basis as are Claims 30-36 and 38-40 as mentioned supra.

Referring to Claims 53-57 and 59: Claims 53-57 and 59 parallel the limitations of Claims 30-36, 38-48, and 50-52 in that they refer to the redemption of the shares created in the commodity. As such, Claims 53-57 and 59 are rejected under the same basis as are Claims 30-36, 38-48, and 50-52 as mentioned supra.

Referring to Claim 60: Claim 60 reflects the limitations of Claim 30. As such, Claim 60 is rejected under the same basis as is Claim 30 as mentioned supra.

Referring to Claims 61 and 63-69: Claims 61 and 63-69 reflect the limitations of Claims 30-36, 38-48, and 50-52. As such, Claims 61 and 63-69 are rejected under the same basis as are Claims 30-36, 38-48, and 50-52 as mentioned supra.

Referring to Claims 70-72: Claims 70-72 parallel the limitations of Claims 61 and 63-69. As such, Claims 70-72 are rejected under the same basis as are Claims 61 and 63-69 as mentioned supra.

8. Claims 7-8, 28, 37, 49, 58, and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Annunziata in view of Turk (US Pat. No. 5,671,364), [hereinafter Turk].

Referring to Claim Z: Annunziata teaches the limitations of Claim 1.

Annunziata, however, does not expressly discuss a method, wherein the commodity delivered into the account, and for which said commodity shares were created using the ECN, is gold or gold receipts.



Turk, in a similar environment, shows a method, wherein the commodity delivered into the account, and for which said commodity shares were created using the ECN, is gold or gold receipts (Turk: Abstract; Column 2, Lines 26-67; Claim 2, 3, 9).

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the method of Annunziata for trading commodities with the invention of Turk for the purpose of utilizing various forms of deposit currency (Turk: Column 2, Lines 12-34).

Referring to Claim 8: Annunziata discloses the limitations of Claim 1.

Annunziata, however, does not expressly teach a method, wherein the value of the shares released via the ECN is based on a net asset value of the received gold.

Turk, in a similar environment, shows a method, wherein the value of the shares released via the ECN is based on a net asset value of the received gold (Turk: Abstract; Claims 1-9).

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the method of Annunziata for trading commodities with the invention of Turk for the purpose of utilizing various forms of deposit currency (Turk: Column 2, Lines 12-34).

Referring to Claims 28, 37, 49, and 58: Claims 28, 37, 49, and 58 reflect the limitations of Claim 7. As such, Claims 28, 37, 49, and 58 are rejected under the same basis as is Claim 7 as mentioned supra.

Referring to Claim 62: Annunziata shows the limitations of Claim 61.

Annunziata, however, does not expressly teach a method, wherein said deposited commodity is gold or another precious metal.

Turk, in a similar environment, discusses a method, wherein said deposited commodity is gold or another precious metal. (Turk: Abstract; Claims 1-9).

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the method of Annunziata for trading commodities with the invention of Turk for the purpose of utilizing various forms of deposit currency (Turk: Column 2, Lines 12-34).

### ***Response to Arguments***

9. Applicants arguments filed 30 March 2009 have been fully considered but have been found to be **moot** and **non-persuasive**. The Applicants argue:

### **Argument**

#### **II. Unpatentability Rejection over Annunziata**

On page 4 of the Official Action, "[t]he Examiner notes that the Annunziata reference does not expressly utilize the term 'creation order'... [but that] the obvious teaching of such is evident in that Annunziata discusses a system and method which is responsible for the creation of commodities, etc. (See at least Annunziata: page 1, paragraphs 0007-0014; page 5, paragraph 0043)." Applicants contend that Annunziata does not disclose, teach, or suggest use of a "creation order" relating to the creation of commodity shares. Further, applicants traverse the Examiner's mischaracterization of Annunziata with respect to Annunziata being responsible for the "creation of commodities, etc." (emphasis added). Even assuming, arguendo, that the Examiner intended to state that Annunziata is responsible for the creation of commodity shares, Applicants traverse this characterization of Annunziata in that the reference completely silent on any mention of shares, trust shares, or commodity shares, as discussed more fully below.

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## A. Specific Deficiencies of Annunziata with Respect to the Independent Claims

## Independent Claim 1

Annunziata does not disclose a method for creating shares in a commodity wherein the commodity shares are processed using an Electronic Communication Network (ECN), and wherein the method includes, inter alia, "receiving...a creation order comprising a request to create the commodity shares; confirming... delivery into an account of an amount of commodity associated with the commodity shares being requested; and releasing, over the ECN, the requested commodity shares based upon the amount of commodity delivered into the account," as recited in independent claim 1, as amended (emphasis added). For example, Annunziata merely transfers conventional ownership of a commodity via a computerized communications link, but Annunziata does not create shares in a commodity or otherwise deal with commodity shares.

## Independent Claim 11

Further, Annunziata does not disclose, teach, or suggest a method for creating shares in a commodity, said commodity shares being processed using an Electronic Communication Network (ECN), wherein the method includes, inter alia, "maintaining a computerized account designated for the creation of commodity shares; receiving, in the computerized account via the ECN, an amount of the commodity shares representing a physical amount of the commodity being received; and sending, via the ECN, a notice acknowledging receipt into the account of the amount of the commodity," as recited in independent claim 11 as amended (emphasis added). Again, Annunziata merely transfers conventional ownership of commodities via a computerized communications link, but does not create commodity shares in a commodity or otherwise deal with shares.

## Independent Claim 19

Still further, Annunziata does not disclose, teach, or suggest a method for creating shares in a commodity, wherein the commodity shares are processed using an Electronic Communication Network (ECN), and wherein the method includes, inter alia, "receiving, via the ECN, a creation order comprising a request to create the commodity shares; physically delivering, into a designated account, an amount of the commodity associated with the requested commodity shares; and receiving, via the ECN, the requested commodity shares," as recited in independent claim 19, as amended (emphasis added). Similarly, Annunziata merely transfers conventional ownership of commodities via a computerized communications link, but does not create shares in a commodity.

## Independent Claim 30

In addition, Annunziata does not disclose, teach, or suggest a method for redeeming shares in a commodity using an Electronic Communication Network (ECN), wherein the

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method includes, inter alia, "receiving, via the ECN, a redemption order comprising a request to redeem an amount of commodity shares associated with an amount of the commodity held in an account; receiving the amount of the commodity shares via the ECN; and releasing, from the account, a physical amount of the commodity associated with the amount of the commodity shares received," as recited in independent claim 30, amended. Annunziata merely transfers conventional ownership of commodities via a computerized communications link, but does not redeem or otherwise deal with shares in a commodity, and particularly does not release, from the account, the amount of the commodity associated with the commodity shares received.

#### Independent Claim 41

Still further, Annunziata does not disclose, teach, or suggest a method for redeeming commodity shares in a commodity using an Electronic Communication Network (ECN), wherein the method includes, inter alia, "maintaining an account designated for the redemption of the commodity shares in a system accessible by the ECN; holding a physical amount of a commodity in the account associated with an amount of commodity shares to be redeemed; receiving, via the ECN, release instructions to release the amount of the commodity from the account; releasing the physical amount of the commodity from the account; and adjusting a remaining portion of commodity shares in the account to account for the physical release of the commodity," as recited in independent claim 41 as amended (emphasis added). Similarly, Annunziata merely transfers conventional ownership of commodities via a computerized communications link, but does not hold an amount of the commodity in an account associated with an amount of commodity shares to be redeemed, and does not adjust a remaining portion of commodity shares in the account to account for the physical release of the commodity.

#### Independent Claim 53

Still further, Annunziata does not disclose, teach, or suggest a method for redeeming shares in a commodity using an Electronic Communication Network (ECN), wherein the method includes, inter alia, "submitting a redemption order comprising a request to redeem an amount of commodity shares via the ECN; delivering the amount of commodity shares to be redeemed via the ECN; and physically receiving an amount of the commodity associated with the amount of commodity shares delivered," as recited in independent claim 53, as amended (emphasis added). Again, Annunziata merely transfers conventional ownership of commodities via a computerized communications link, but does not hold an amount of the commodity in the account associated with an amount of commodity shares to be redeemed, nor does Annunziata release the amount of the commodity from the account.

#### Independent Claim 60

Furthermore, Annunziata does not disclose, teach, or suggest a method for redeeming commodity shares in a commodity using an Electronic Communication Network (ECN), wherein the method includes, inter alia, "submitting a redemption order comprising a

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request to redeem an amount of commodity shares via the ECN; delivering the amount of commodity shares to be redeemed via the ECN; and receiving an amount of cash from the sale of the amount of commodity associated with the amount of commodity shares delivered," as recited in independent claim 60, as amended (emphasis added). To reiterate, Annunziata merely transfers conventional ownership of commodities via a computerized communications link, but does not redeem or deliver shares in a commodity, nor does Annunziata receive cash from the sale of the commodity associated with the commodity shares.

#### Independent Claim 61

Penultimately, Annunziata does not disclose, teach, or suggest a method for securitizing a commodity using an Electronic Communication Network (ECN), wherein the method includes, inter alia, "receiving a deposit of a physical amount of a commodity; holding said physical amount of the commodity in a trust; and issuing a number of commodity trust shares corresponding to said physical amount of the deposited commodity," as recited in independent claim 61, as amended (emphasis added). As previously discussed, Annunziata merely transfers conventional ownership of commodities via a computerized communications link, but Annunziata does not involve or even mention the use of a trust or trust assets, particularly holding an amount of a commodity in a trust, and even more particularly, Annunziata does not disclose issuing shares corresponding to the amount of a commodity.

#### Independent Claim 70

Finally, Annunziata does not disclose, teach, or suggest a commodity trust system which includes, inter alia, "an Electronic Communication Network (ECN); a commodity trust, wherein said commodity trust holds a physical amount of a commodity, a trustee to administer said commodity trust, and a number of commodity trust shares corresponding to said amount of a physical commodity, wherein said number of commodity trust shares are processed and accounted for in a computer system having an interface with the ECN," as recited in independent claim 70 as amended (emphasis added). As previously discussed, Annunziata merely transfers conventional ownership of commodities via a computerized communications link, but does not involve or even mention the use of a trust, a trust system, trust assets, or a trustee to administer a commodity trust. Furthermore, Annunziata does not disclose holding an amount of a commodity in a trust, and even more particularly, Annunziata does not disclose issuing shares corresponding to the amount of a commodity. Accordingly, since Annunziata does not teach or suggest all the claimed limitations, reconsideration and allowance of independent claims 1, 11, 19, 30, 41, 53, 60, 61, and 70 are respectfully requested. In addition, dependent claims 2-10, 12-18, 20-29, 31-40, 42-52, 54-59, 62-69, and 71-72 variously and ultimately depend from these patentable independent claims, and are submitted as being allowable at least on that basis, without further recourse to the patentable features recited therein.

**Discussion of Annunziata**

Annunziata merely transfers conventional ownership of a commodity via a computerized communications link, but does not create *commodity shares* or *trust shares* in a commodity, or otherwise deal with commodity shares or commodity trust shares. *Annunziata is completely silent of any use of commodity shares, a trust, a trust system, trust assets, or a trustee to administer a commodity trust or foreign currency trust.* Furthermore, Annunziata does not disclose holding an amount of a commodity in a trust, and even more particularly, Annunziata does not disclose issuing *shares* corresponding to the amount of a commodity. Applicants reiterate that Annunziata is merely directed to a computer-implemented system for *transferring* ownership of commodities via a communications link, wherein a database is used that contains open bids and offers currently available for trading that have been submitted by other users of the system (see Annunziata at ¶ [0029]).

**Discussion of Turk and its Deficiencies**

According to the Abstract, Turk is purportedly directed to a method and system for commodity-based currency for payment accounts elimination of payment risk in which gold or other commodities are permitted to circulate as currency, and which requires a network of system users to participate in financial transactions where payment is made in units of gold. The gold is kept in secure storage at a deposit site for the benefit of the users. The payments in gold are effected to a computer system having data storage and transaction processing programs that credit or debit the units of account of gold held for the account of each system user. Assuming, *arguendo*, that Turk discloses that for which it is offered by the Examiner, i.e., gold being used as the delivered commodity, Turk does not make up for previously-identified deficiencies of Annunziata with respect to the anticipation rejection of independent claims 1, 19, 30, 41, 53, and 61 from which claims 7-8, 28, 37, 49, 58, and 62 variously depend. Specifically, *Turk does not disclose, teach, or suggest creation or use of commodity shares or commodity trust accounts with gold as the underlying commodity.* Turk merely represents the conventional physical transfer of gold, with the added features that the gold is kept in a centralized secure storage for the benefit of the users, and for which a computer-implemented bookkeeping system is implemented.

**Regarding Argument**

The Examiner respectfully disagrees. Annunziata in combination with Turk teaches and suggest use of a "creation order" relating to the creation of commodity shares. Annunziata is indeed responsible for the creation of commodities and does so via means of an Electronic Communication Network or an ECN as referred to by

Applicants (See at least Annunziata and Turk: Abstracts; Figures). Annunziata transfers ownership of a commodity via a computerized communications link. Turk is directed toward a method and system for commodity-based currency for payment accounts elimination of payment risk in which gold or other commodities are permitted to circulate as currency, and which requires a network of system users to participate in financial transactions where payment is made in units of gold. Turk shows the trading of gold and gold certificates, additionally wherein creation orders and/or creating an order is inherent. Each time a commodity option, stock or bonds is traded, the buyer/seller creates an order or ticket for this case the equity units are for gold, which deposited to the customer's account.

As such, the Examiner maintains the grounds of rejection.

10. Any additional arguments filed 30 March 2009 have been fully considered but have been found to be **moot** and **non-persuasive** as the Examiner has more specifically pointed out the limitations found within the instant claim language as presented.

### ***Conclusion***

11. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to BENJAMIN S. FIELDS at telephone number 571.272.9734. The examiner can normally be reached MONDAY THRU FRI between the hours of 9AM and 7PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, KAMBIZ ABDI can be reached at 571.272.6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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Benjamin S. Fields

30 June 2009

/Harish T Dass/

Primary Examiner, Art Unit 3692